IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.686 of 2007

Reserved on 13.9.2007

Date of decision 27.9.2007

HPSEB and others Petitioners

Vs.

Jiwan Singh and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr.Vikram Thakur, Advocate, vice Mr.Shrawan Dogra, Advocate.

For the respondents: Mr.Sirshoo, Advocate, for respondents No.1 and 2.

Rajiv Sharma, J.

A challenge has been laid by the petitioners to the Award passed by the Presiding Judge, Labour Court, Shimla on 3.8.2006 in Reference No.46 of 2005.

The primary contention of the workmen before the Labour Court was that they were engaged in the years 1986 and 1987, respectively and had been retrenched on 21.1.1994 and 21.9.1993 respectively, without following the mandatory provisions of Section 25 (F) of the Industrial Disputes Act, 1947. The claim was contested by the employer. The primary stand of the employer before the Labour Court was that the workmen had not completed 240 days and they had abandoned their jobs

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

voluntarily. The Labour Court after hearing the parties had answered the reference in affirmative by directing the reinstatement of the workmen but without any back wages and seniority.

Mr.Thakur , learned vice counsel appearing for the petitioners had strenuously argued that the workmen had not completed 240 days and their reinstatement directed by the Labour Court was contrary to law. He had also contended that the Labour Court had failed to take into consideration the Notification dated 26.12.1992 whereby the petitioner Board was exempted from all the provisions of Industrial Employment Standing Orders 1946. Mr.Sirshoo, learned counsel appearing on behalf of respondents No.1 and 2 had supported the Award dated 3.8.2006.

I have heard learned counsel for the parties and have gone through the record carefully.

It is evident from the man days chart annexed with the petition that the respondent workman Jiwan Singh had completed 335 days preceding a block of 12 calendar months at the time of his retrenchment. Similarly, respondent No.2 workman Balbir Singh had also completed 332 days in a block of 12 calendar month at the time of his retrenchment. The Labour Court after taking into consideration that the workmen had completed 240 days at the time of their retrenchment had rightly come to the conclusion that they were entitled to invoke provisions of Section 25(F) of the Act. This finding recorded by the Labour Court is upheld. Now the Court has to consider the second contention of the learned counsel for the petitioners with regard to notification published on 26.12.1992. It is clear that the retrenchment of the workmen had been effected in the years 1993 and 1994, respectively and on that date the provisions of Industrial Disputes Act, 1947 were applicable and not the Standing Orders of the petitioner Board.

The respondents workmen had appeared before the Labour Court and had testified that persons junior to them, namely, Daulat Ram, Nita Ram and Bhola were engaged after their removal. This statement of the workmen was not rebutted by the employer. To the contrary as per the observations made by the learned Presiding Judge of the Labour Court the employer had failed to appear before the Labour Court despite frequent adjournments granted to it. Thus the retrenchment of the respondents No.1 and 2 was also bad for not following the provisions of Section 25(G) of the Industrial Disputes Act, 1947. Accordingly there is no merit in this writ petition and the same is dismissed and the award dated 3.8.2006 is upheld.

September 27, 2007 (g) **(Rajiv Sharma), J.**